

## **VI. WATER ISSUES AND RECOMMENDATIONS**

With the ideas and suggestions that the public provided in writing or at Steering Committee or watershed committee meetings, the Steering Committee identified and developed recommendations regarding the following water issues.

### **A. ON-GOING UPPER CLARK FORK WATER PLANNING AND MANAGEMENT MECHANISM**

#### **Issue**

The success of the Steering Committee in developing this plan demonstrates that the water users and managers in a basin can work together as partners in planning and managing a basin's waters if three requirements are met. First, the mechanism must be firmly rooted at the local level. State and federal agencies alone will never have the funding, staff, knowledge, or information required to manage water at a basin level. Second, the locally based mechanism must be broadly representative of all basin water users. Any users excluded will seek to protect and further their interests by blocking the function of the local mechanism through the intervention of the legislature, executive branch agencies, or the courts. Third, local water users must be willing to invest their time, energy, and talents to make the local mechanism work. Local water users serving on the Steering Committee or its watershed committees invested hundreds of hours--most without any monetary compensation. Based on the public comment and its own experience, the Steering Committee proposes the following recommendation:

#### **Recommendation**

The legislature should provide for an on-going basin water management mechanism including a basin-wide committee and watershed committees. This mechanism should not be vested with legal authority to compel any action by any water user or water interest. Its purposes should include:

- Providing a forum for all interests to communicate about water issues;
- Providing education about water law and water management issues;
- Identifying short-term and long-term water management issues, and problems and alternatives for resolving them;
- Facilitating resolution of water related disputes via consensus-based collaborative processes including mediation;
- Advising the Department of Natural Resources about water permitting activities;
- Consulting with the basin's local governments; and
- Reporting periodically to some entity with water management authority such as the legislature.

In 1991, the legislature directed that the Steering Committee be appointed by the director of the Department of Natural Resources and Conservation and that the members include representatives of the following groups: agriculture organizations, conservation districts, departments of state government, environmental organizations, industries, local governments, reservation applicants, utilities, and water user organizations. The members of the on-going basin-wide committee should maintain this broad range of representation of the basin's water interests. For the next two years the members should also continue to be appointed by the DNRC Director. However, if another method is identified that better ensures local input to member selection while

maintaining the broad range of member representation of basin water users, the on-going basin-wide committee should recommend modifications of the selection process to the 1997 legislature.

The basin-wide committee should continue to decide the membership of watershed committees. This approach would allow maximum flexibility so that committees that best fit conditions in each watershed could be created while avoiding duplication of other existing water-related committees, such as the newly formed group of the Blackfoot Valley known as the Blackfoot Challenge.

## **B. PROTECT EXISTING WATER RIGHTS**

### **Issue**

From its earliest meetings, the Steering Committee was unanimous that the water management plan protect existing water rights. This view was strongly reinforced by public comment. The Steering Committee, therefore, makes the following recommendation:

### **Recommendation**

Any action taken by the legislature or any executive branch agency in response to this plan must be predicated on preserving existing water rights, permits and certificates in effect as of July 1, 1995.

## **C. WATER ADJUDICATION SYSTEM**

### **Issue**

In order for water rights to be comprehensively administered in the upper Clark Fork Basin, there have to be final decrees issued by the Water Court. Temporary preliminary decrees (TPDs) have been issued for all but the Blackfoot subbasin. In order for the TPDs to become final, the reserved water rights of federal land management agencies and tribal governments have to be considered.

Reserved water rights are the province of the Compact Commission. The Compact Commission has a large challenge and limited resources. The reserved water rights of the U.S. Forest Service are a significant portion of that work load, and how those rights are dealt with will affect a very large number of sub-basins across the state. Until the Forest Service's reserved water rights are addressed, it will be impossible to complete final decrees in at least one-half of the state, including the entire Clark Fork Basin. There are a significant number of subbasins in which Forest Service reserved rights are the only reserved water rights involved.

### **Recommendation**

The Steering Committee recommends that the Montana Reserved Water Rights Compact Commission make the U.S. Forest Service a high priority among the federal agencies in actively negotiating a reserved water rights compact. Further, if the commission takes a geographical approach to the Forest Service's reserved water rights claims, the Rock Creek drainage should be studied as a test case of a basin where Forest Service claims are downstream of state-based private water rights claims.

## **D. IMPLEMENTING WATER ADJUDICATION DECREES**

### **Issue**

Some years in the future, when the Water Court issues final water rights decrees, determinations will have to be made as to how those decrees will be enforced so that all water right holders in the upper Clark Fork River Basin will receive the flow rates they are entitled in the priority they were issued. In the past, individual water users have only been concerned with their own decree or their own right within a sub-basin on a particular stream reach. Completion of the adjudication will end this isolation. All of the basin's water users will be tied together because the relative priorities of all right holders will be determined.

Consideration of all water rights from a basin-wide perspective will be important because of the large Clark Fork River mainstem water rights owned by Washington Water Power Company (WWP) and Montana Power Company (MPC). WWP has three rights at its Noxon Rapids Dam near the Montana-Idaho Boarder totaling 55,400 cubic feet per second. These rights are filled on an average of only 22 consecutive days a year, generally in late May and early June during periods of high water. The priority dates for these rights are 1951 for 35,000 cfs, 1959 for 5,400 cfs, and 1976 for 15,000 cfs. MPC holds rights at its Milltown Dam located just upstream from Missoula for 2,000 cfs with a 1904 priority date. In some years the flow of the Clark Fork at this dam falls below 2,000 cfs as early as June. In July 1988 the average mean flow rate at Milltown Dam was 1,197 cfs, in August it fell to 627 cfs. Hence in 1988, MPC received only 60 percent of its right in July, and 32 percent in August.

During periods when their rights are not met, both WWP and MPC can call for curtailment of water use by junior water rights holders, i.e. those with rights dated later than those of WWP or MPC. Again, after the final decrees are issued, the relative priority dates of all water users throughout the basin will be known. This means that whenever their rights are not being met, WWP and MPC could issue calls affecting water rights throughout the basin (for MPC all mainstem and tributary junior users above Milltown and for WWP all mainstem and tributary users above Noxon Rapids). Clearly, the enforcement of these utilities' mainstem rights could be both complicated and costly and may exceed the value of the benefit to them, particularly if the benefit amounts only to a partial fulfillment of their rights.

To ensure fairness to all water users in every basin and subbasin of the Clark Fork River, it may be necessary to create some system of enforcing all rights to ensure that each basin is contributing the amount of water pursuant to their decrees to which the power companies are entitled. Such a system could become a huge, expensive new bureaucracy.

### **Recommendation**

The on-going basin planning and management mechanism should begin considering the issues such as cost, funding, staffing, practicality, accuracy, and fairness relating to a future water right enforcement system.

## **E. WATER STORAGE**

### **Issue**

The Steering Committee has emphasized the importance of storage as a management tool. It has initiated or encouraged studies designed to identify opportunities to increase storage through:

- Potential storage sites in the basin;
- Enhancement of existing storage sites; and
- Groundwater recharge which arises as delayed return flows (artificial recharge and return flow).

#### **a. Structural Storage Alternative**

The Steering Committee initiated a study of potential and existing storage to identify priority sites for expanding structural storage in the basin. It formed a subcommittee of its members who assembled and examined existing studies and developed a screening process to rank potential storage sites. Topics examined included reservoir size, location, potential safety hazards, amount of fill versus amount of storage, potential to resolve water conflicts, substantial conflicting land uses, and known geologic impediments. The list of ranked reservoirs and the screening process was presented to both the full Steering Committee and the watershed committees. Basin water users, through the six watershed committees, were then asked to discuss potential storage sites, review research provided by the Steering Committee, and make recommendations as to potential storage sites, site conditions, beneficiaries, or other local conditions. From the deliberations of the storage subcommittee and the watershed committees, the Steering Committee identified the eight priority potential storage sites listed in Table 6.

**Table 6. Priority Potential Storage Expansion Sites**

<i>New Sites:</i>
<b>Lower Browns Gulch</b> - near Ramsey.
<b>Cable Creek</b> - west of Anaconda
<b>Blackfoot Meadow</b> - above Elliston
<b>Upper Three Mile Creek</b> - near Avon
<i>Existing Sites:</i>
<b>Rainbow Lakes</b> - southeast of Drummond
<b>Gold Creek Lakes</b> - southeast of Drummond
<b>Upper Douglas Creek</b> - southeast of Hall
<b>Storm-Silver Lake</b> - west of Anaconda

The Steering Committee then asked the Soil Conservation Service (SCS) and the DNRC to analyze construction requirements and costs, known or modeled water availability, existing water rights, present operating regulations, new land use conditions, and potential beneficiaries for each of these sites. The SCS evaluations were completed in August of 1994.

Storage projects have been traditionally funded by the federal government and the agricultural interests who benefit from them. Funding and technical assistance are still available from federal agencies, such as the SCS and the U.S. Bureau of Reclamation and state Renewable Resource Grant and Loan Program. These traditional sources, however, will probably not be sufficient to fund new storage projects without assistance from project beneficiaries.

b. Non-Structural Alternatives

The paper in Appendix C by Eugene Manley, a member of the Steering Committee, and William Ohrmann, participant in the Flint Creek watershed committee, describes the role that irrigation return flows play in maintaining both diversionary water uses and in-stream flows. It also discusses how actions often considered to be water conservation or efficiency measures, such as switching from flood to sprinkler irrigation and lining ditches and canals to reduce leakage, can adversely affect return flows and the water uses that the return flows support. While the concept of return flows is becoming better understood, particularly among nonagricultural water users, sufficient quantitative understanding of the sources, timing, and amount of return flows does not exist to permit return flows to be managed to benefit diversionary and in-stream water users in specific watersheds.

**Recommendations**

a. Structural Storage

The on-going basin-wide committee should continue investigations of the priority sites identified in the Upper Clark Fork River Basin Steering Committee storage study. In particular, the potential beneficiaries of and a funding mechanism for these priority sites should be identified.

The Steering Committee was unable to consider and make recommendations concerning the existing Georgetown-Storm-Silver Lake system because the ownership of the facilities and water rights was clouded by litigation. When the litigation is resolved, this system should be studied to determine if its full water storage capacity is being utilized.

The on-going basin-wide committee should also create some means to examine additional storage options in the basin as they arise.

b. Nonstructural Storage

The on-going basin-wide committee should continue to support the Flint Creek return flow study to permit better understanding and management of return flows to benefit in-stream and diversionary water uses. The on-going mechanism should promote similar studies of the role of return flows in watersheds throughout the basin.

**F. WATER QUALITY**

**Issue**

Four water quality problems, toxic metals pollution, dewatering, nutrient pollution, and non-point pollution, prevent waters in the basin from supporting certain beneficial uses. The metals sources in the headwaters region and metals deposits in floodplains of the upper Clark Fork Basin cause concentrations of pollutants that seasonally exceed criteria designed to protect aquatic life. The groundwater adjacent to Milltown Reservoir



has been contaminated with arsenic as a result of river-borne tailings material that has concentrated behind the dam. Periodic fish kills have been documented above Deer Lodge. Dewatering of the river for irrigation is an on-going problem, and summer water temperatures periodically exceed applicable water quality standards designed to protect trout. Nutrients from municipal sewage discharges, agricultural nonpoint sources, and natural sources promote the development of excessive quantities of filamentous algae, and mid-summer dissolved oxygen levels occasionally fall below standards. The presence of large quantities of algae impairs beneficial water uses such as aquatic life, irrigation, and recreation. Nonpoint source pollution resulting from land uses including agriculture, timber harvesting and mining is a major problem throughout the upper basin, both in the tributaries and along the mainstem. Other water quality problems in the upper Clark Fork Basin are more localized in nature and include discharges of toxic substances (ammonia) from municipal wastewater treatment facilities and an abandoned post and pole operation, stream channelization, and other habitat alterations.

## **Recommendations**

### **a. Toxic Metals and Stream Dewatering**

Sources and effects of heavy metals pollution in this drainage have been extensively studied for several decades. Remediation of the problem is currently being pursued under the federal Superfund Program. However, it is generally agreed that a complete elimination of sources will not be possible. Maintenance of current streamflow levels in the headwaters area from January through April will likely continue to be important to dilute discharge from the Warm Springs ponds. Similarly, maintenance of current dilutional inflows from the Little Blackfoot River, Rock Creek, and the Big Blackfoot River appears to be important on a year-round basis. Offstream water storage and/or enhancement of summer streamflows in certain reaches of the Clark Fork could have negative consequences to some water uses already impacted by metals. A loss of flushing flows through spring storage could increase in-channel accumulations of metal-bearing sediments. Streamflow augmentation in the Clark Fork above Garrison, if not closely monitored, could increase metals concentrations in the river by increasing erosion of existing streamside and stream channel tailings deposits. Impacts on water quality, particularly toxic metal concentrations, should be carefully considered before proposing new storage or other management activities that would change the flow regime in the Clark Fork River.

### **b. Nutrients and Noxious Aquatic Plants**

A comprehensive plan to reduce current rates of nutrient loading to the upper Clark Fork River has recently been developed by the states of Montana, Idaho, and Washington and EPA Regions 8 and 10. The plan, which was mandated by the U.S. Congress in amendments to the 1987 federal Clean Water Act, addresses nutrient pollution throughout the 2,600 square-mile, three-state Clark Fork-Pend Oreille Basin.

A tri-state council composed of local stakeholders including county government, citizens, Indian tribes, businesses, industries, and others was established in 1994 to implement the plan. The on-going basin-wide committee should continue to coordinate its activities with the tri-state council.

The Steering Committee and its watershed committees were instrumental in pursuing local implementation of several recommendations in the tri-state plan. These actions include (1) the adoption of a phosphate detergent ban by the City of Deer Lodge, and (2) planning for land disposal of Deer Lodge's municipal sewage effluent, instead of the

current practice of discharging it directly to the Clark Fork River. The on-going basin-wide committee should encourage and assist other basin communities to ban phosphate detergents.

The Steering Committee organized several local meetings to evaluate the opportunities for land application of Deer Lodge wastewater. These meetings led to initiation of a planning study financed by the City of Deer Lodge and the Montana Department of Health and Environmental Sciences (Municipal Wastewater Assistance Program) to evaluate the potential for applying effluent to hay fields on the Grant Kohrs Ranch, a national historic site. A draft of the report has been released, and the project appears to be feasible. Meetings have been scheduled between the parties to discuss operational agreements, easements, funding options, water right issues, and other constraints. All parties are optimistic that the project will become a reality. The successful implementation of this project could decrease nutrient loading to the upper Clark Fork River by up to 30 percent and reduce nutrient concentrations in the river by 70 percent or more. The current excessive levels of algae would be expected to decline in many miles of the Clark Fork River. The DNRC has requested parties interested in this proposal to request an declaratory ruling to clarify the need for water rights permits when disposal of sewage treatment effluent is changed from discharge to a river to a land application. The on-going basin-wide committee should continue to encourage and assist the City of Deer Lodge, the National Park Service, and the DHES in implementing this land application project. It should also encourage and assist other communities, e.g., Butte, Galen, Drummond, Philipsburg, and Missoula, with considering similar projects. The on-going committee should also encourage the DNRC to resolve water rights questions surrounding land application.

#### **c. Nonpoint Source Pollution**

Nonpoint source pollution of surface and ground waters is derived from land use activities such as agriculture, silviculture, mining, construction, land disposal, and others. The sources are diffuse, and contamination usually results from overland runoff, percolation, precipitation, or atmospheric deposition rather than from a discharge at a specific, single location. The primary pollutants of concern include sediment, nutrients, toxic substances, pathogens, pesticides, acidity, and salts. Nonpoint source pollution is a significant problem in the upper Clark Fork Basin. The primary pollutants are metals derived from floodplain mine wastes and waste disposal areas, and sediment, nutrients, and animal wastes from agriculture and silviculture.

The DHES has discussed with the Steering Committee and its watershed committees implementation of a voluntary, local non-point pollution control strategy. Watershed committees would survey and prioritize existing non-point problems and develop a plan for resolving them. When requested, the DHES could assist watershed groups with funding and technical assistance. The on-going basin-wide committee should continue to encourage upper Clark Fork Basin watersheds to participate in this strategy and should provide assistance when requested and able to do so.

### **G. FISHERY**

Much is known about the effects of metals left over from past mining on water quality and on the trout food chain, physiology, and survival in the upper Clark Fork. These metal-related problems and many others adversely affecting the upper Clark Fork Basin fishery are beyond the scope of the Steering Committee's mandate. This plan addresses only fishery issues involving in-stream flows and riparian habitat.

## Issue

The Clark Fork River and many of its tributaries experience water shortages during the summer that adversely affect fish survival. The DFWP has compiled a list of dewatered streams in the state; these fall into two categories - chronically dewatered and periodically dewatered. Chronically dewatered streams experience sufficient dewatering nearly every year during the summer months to degrade fish habitat. Periodically dewatered streams experience dewatering only during drought years. Streams that appear on these lists are only those that support important fisheries or contribute to important fisheries by providing spawning and rearing habitats. The portions of the list that apply to the upper Clark Fork Basin are shown in Appendix D. The number and miles of chronically dewatered streams in the upper Clark Fork Basin are shown in Table 7.

**Table 7. Number of Miles of Chronically Dewatered Streams In the Upper Clark Fork River Basin**

STREAM	NUMBER	MILES
Big Blackfoot River tributaries	16	71.4
Big Blackfoot River mainstem	1	11.0
Flint Creek tributaries	6	24.4
Flint Creek mainstem	1	42.4
Little Blackfoot River tributaries	14	49.7
Little Blackfoot mainstem	1	25.5
Rock Creek tributaries	6	21.9
Rock Creek mainstem	0	132.1
Upper Clark Fork tributaries	24	0
Upper Clark Fork mainstem	1	92.7
<b>Total</b>		<b>471.1</b>

On the Clark Fork mainstem, only the reach from Warm Springs Creek to Racetrack Creek is listed on the periodically dewatered list. The length of this section is 9.0 miles.

Improvement in streambank and stream channel stability, riparian vegetation, and other fish habitat features can improve spawning success and fish numbers. Several streams in the basin have been improved through cooperative efforts between the DFWP and willing landowners. Projects completed or in progress to date include riparian fencing, riparian shrub planting, moving corrals off the stream, and improving fish passage over an irrigation structure. Many other streams in the upper basin could be improved, although the number of miles of streams needing improvement has not been determined.

## Recommendation

The on-going basin-wide and local watershed committees should continue to provide a communications link through which the DFWP and willing landowners can discuss opportunities for leasing water implementing the trial in-stream flow program outlined in this plan, if it is approved by the legislature, or making other arrangements to relieve dewatered stream sections and for stream habitat improvement on private land. The DFWP should continue to seek willing landowners to help solve dewatering problems. It should also continue to utilize River Restoration Program funds (earmarked fishing license revenue) and fish kill mitigation money (ARCO settlement in 1989 fish kill) to fund habitat improvement projects on private land.



## **H. IN-STREAM FLOW PILOT STUDY**

### **Issue**

Under present law, water cannot be appropriated unless diverted or impounded. Hence existing water rights cannot be changed to in-stream flows without an act of the legislature. The administrative avenues now available to protect in-stream flows are limited to the water reservations and the existing water leasing program. Only state and federal agencies can seek a reservation to protect in-stream flows on behalf of the fishery and only the DFWP can lease water for in-stream flows on up to 20 stream reaches.

The Steering Committee has developed a proposal for a pilot program that would test a new mechanism for in-stream flow protection by allowing holders of existing water rights to convert an existing right to an in-stream use for the period of the study for fisheries and other benefits. The proposal would also allow water right holders in the upper Clark Fork Basin to lease water rights to public or private parties for in-stream flows. The program is intended to apply only to the upper Clark Fork River Basin.

Leases or conversions that occur under this proposal would be subject to all principles found in Montana's prior appropriation doctrine, including objections from affected water right holders. A lease or conversion could not occur if it adversely affected the holder of another valid, existing water right (for example, if it was demonstrated that important return flows were interrupted). Prevailing objectors in all water-use change proceedings - not just those related to in-stream flows - would be reimbursed by the nonprevailing party for attorney fees and costs.

Each in-stream flow lease and conversion under this proposal would be evaluated after five years if a petition to do so is made to the DNRC by a water right holder claiming harm. The lease or conversion might then be reversed or modified. All leases and conversions will be evaluated for adverse and beneficial effects by the basin-wide committee 10 years after the proposal is enacted by the Legislature. The changes required by this proposal would have to be enacted by the Legislature.

The purpose of the 10 year study would be to determine the implications of potential water rights purchases. Specific study objectives include:

- Creating cooperative opportunities for improving in-stream flows in the upper Clark Fork River and its tributaries.
- Ensuring that any water user who converts a water right to in-stream flows can protect that right.
- Encouraging leases of water for in-stream flows while maintaining protection for all water right holders under the prior appropriation doctrine.
- Evaluating the tax consequences of water leases for in-stream flows.
- Ensuring that prevailing parties in all objection proceedings in the upper Clark Fork Basin concerning water-use changes - including but not limited to those involving changing uses from diverted uses to non-diverted uses (i.e., in-stream flows) - are reimbursed by the nonprevailing parties for attorney fees and costs.
- Improving relationships between water users who divert water and those who don't divert.

a. DFWP Application

In 1986, the DFWP submitted an application for in-stream flow reservations in the mainstem Clark Fork River and 17 tributary streams from Warm Springs Creek to Milltown Dam near Bonner. The requests were intended to protect fish and wildlife populations by (1) preventing further depletion of stream flow and (2) maintaining existing water quality. Because of more than a century of diversions of water for mining and agricultural purposes, stream flow depletions were adversely affecting fish populations. In addition, mining wastes in the upper basin had produced major water quality problems in the Clark Fork River that were also harming the fishery.

Prior to 1972, few, if any, fish could be found in the reaches of the Clark Fork River above Deer Lodge. New waste treatment facilities installed by the Anaconda Company by 1972 allowed river fish populations to make a significant comeback immediately below the Warm Springs settling ponds. However, water quality problems continued to persist elsewhere in the river system. In addition, the state was continuing to grant new water use permits that contributed to the further depletion of the Clark Fork River and its tributaries. The DFWP believed that, if given the chance, the Clark Fork could become one of the state's premier trout fisheries and recreational rivers, but only if sufficient water was left in-stream and the pollution cleaned up.

The DFWP's application requested two kinds of reservations; (1) flows in the main river and tributaries necessary for maintaining fish habitat and (2) additional winter flows in tributaries necessary for providing water to the main river for protection of existing water quality, but only until mining wastes could be cleaned up. The current Superfund activities are now addressing the water quality problem. Although in-stream reservations would not produce more water, they would help ensure that flows would not be further depleted by new uses. They would, in effect, maintain the status quo of the existing fisheries and would allow for the eventual improvement in fish populations once mining waste problems were resolved.

By protecting existing streamflows and water quality, the in-stream flow reservations would have ensured at least the current level of use and enjoyment of the river. The DFWP believed the water reservations, combined with the eventual reclamation of mining wastes, would allow the Clark Fork to be an even better recreational stream in the future. The DFWP also believed that without in-stream reservations, the benefits of mining reclamation would not be fully realized. The quality of water would be improved, but the quantity depleted sufficiently to negate these gains.

At present, water reservations are the only legal means of securing in-stream water rights for fish, wildlife and recreation. They would simply have provided the DFWP a water right priority date under the "first in time, first in right" principle. The priority date of the reservations would be senior to any new permits issued by the state after the reservations were granted. However, they would not have affected any existing rights in effect at that time. The priority date was established by the legislature as May 1, 1991 when OS.B. 434 was approved.

The in-stream water rights that could be granted to the DFWP through the reservation process would do the following:

- 1) Provide the DFWP the legal ability to participate in the decisions involving new water use permit applications, change applications, and other water right issues;
- 2) Establish a priority date for in-stream flows, even though it would be junior to users who already have water rights;

## **Recommendation**

The legislature should enact a pilot in-stream flow study for the upper Clark Fork River Basin only with the following elements:

- 1) Water does not have to be diverted to be appropriated for a beneficial use.
- 2) Any water right holder can leave water in-stream, provided there is no demonstrated adverse effect on other water right holders. The segment of the stream in which in-stream flows are to be protected should be described in any change of use application filings.
- 3) Water for in-stream flows can be transferred through lease to public or private interests.
- 4) All potentially affected water rights holders can object to a change of use for in-stream flows. (For example, if a proposed in-stream flow use would disrupt return flows to the detriment of downstream users.)
- 5) The cost of objecting by a prevailing party in all change proceedings will be paid by the non-prevailing party.
- 6) Evidence to demonstrate adverse effect will require criteria similar to current change or permit application objections.
- 7) The pilot program will be evaluated in two ways:
  - a) Each lease for or conversion to in-stream flows will be evaluated for adverse impacts on other water users five years after it goes into effect, upon a formal request to the DNRC by water right holders who claim harm.
  - b) All leases or conversions for in-stream flows will be reviewed by the on-going basin-wide committee for adverse and beneficial effects 10 years after legislative enactment. The results of the review will be reported to the next Legislature, including a recommendation on whether the in-stream flow/transfer process should be continued and conversion of the leases to purchases should be allowed. This review could be tied into a review of basin closure.
- 8) The local watershed committees created by the on-going basin-wide committee pursuant to Recommendation A above should be encouraged to review, informally, all proposals to leave water in-stream in an attempt to resolve change conflicts before they reach the DNRC or the water court.

## **I. WATER RESERVATIONS**

### **Issue**

In 1986 and 1987, the DFWP and the GCD, respectively, filed water reservation applications, as outlined below.

- 3) Establish an upper level of stream flow that could be achieved if additional water should become available through water rights abandonment or other means; and
- 4) Establish a right to water that is still physically available for appropriation on a more regular basis, such as winter flows that are as important to fish as summer flows.

When it entered into negotiations that resulted in the legislation establishing the Steering Committee and its mandate to develop a basin water management plan, the DFWP was hopeful the process would fulfill as least some of the objectives of its water reservation application. Closing the basin as recommended in this plan to the issuance of new water use permits would preserve the status quo of stream diversion allowed by existing water rights. This helps fulfill one component of the fisheries need - water quantity - by preventing additional dewatering. However, basin closure does not enable the DFWP to participate in water rights permitting or change processes to the extent that would be possible if water reservations were granted. A basin closure is acceptable and desirable only with the condition that the reservation process is preserved, with priority date intact, and that it could be pursued again in the event that the basin closure is rescinded, or modified, after a periodic review proposed in this plan.

#### **b. Granite County Conservation District Application**

In 1987, the Granite County Conservation District (GCD) applied to reserve water from Boulder Creek and the North Fork of Lower Willow Creek for future irrigation use in Granite County.

The proposed water reservation was intended for two projects:

- 1) A combination of storage and irrigation facilities to irrigate previously non-irrigated land using Boulder Creek as the water source, and the area immediately to the north as the irrigation site; and
- 2) Creation of a second storage facility in the lower Willow Creek watershed that would provide supplementary water to the area now being irrigated with water from the existing reservoir.

At the time of application, financial constraints, a lack of capital (including State and Federal assistance), and poor market conditions, prevented development of the two proposed projects. Cash receipts from crop and livestock production were down 25 and 2 percent, respectively, in 1983. This downward trend continued through the subsequent two seasons. Financial assistance for water development projects had been cut drastically and was continuing to decline at the time of the application due to federal and state budget cuts. GCD filed the water reservation application in an attempt to insure that water would be available when the economy became stronger and the proposed projects could be constructed.

#### **Recommendation**

The suspension of the GCD's and DFWP's reservation application should be continued but be preserved with priority dates intact during the period of the basin closure. If a future closure review recommends either that the closure be terminated or that the exemptions to the closure be significantly modified, the GCD and DFWP should retain the right to renew their reservation applications at the end of the closure period without loss of their priority dates. Renewing their applications could include modification to their original requests in light of any changed circumstances. If the



DFWP reservation requests were modified downward, the established priority date would still apply. However, if a DFWP reservation request was to be modified upward or an additional stream included, the modifications would be considered a new application for that stream, and the May 1, 1991 priority date would not apply. Similarly, if any of GCD's reservation requests were modified upward or new storage projects were proposed, the modifications would be considered a new application, and the May 1, 1991 priority date would not apply. However, if the reservation request were modified downward, the established priority date would still apply.